

## **REMARKS**

By this amendment, Applicants amend claims 17 and 28. Claims 9-17 and 20-28 remain pending in this application.

In the Office Action<sup>1</sup>, the Examiner took the following actions:

rejected claims 17 and 28 under 35 U.S.C. § 112, second paragraph;

rejected claims 9-11, 13-16, 20-22, and 24-27 under 35 U.S.C. § 102(e) as being anticipated by Shimizu et al. (U.S. Patent No. 6,720,976); and

rejected claims 12, 17, 23, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Shimizu<sup>2</sup> in view of Yasui et al. (U.S. Patent No. 6,320,580).

### **I. CLAIM FOR PRIORITY**

At the outset, Applicants note that the Examiner has not acknowledged Applicants' claim for priority or receipt of the certified copy of the priority document. Applicants refer to the transmittal letter accompanying the filing of the present application on April 14, 2004, which included the priority claim and indicated that a certified copy of the priority document is on file in parent Application No. 09/617,130 (now U.S. Patent No. 6,746,331). Accordingly, Applicants respectfully request that the Examiner acknowledge Applicants' claim for priority and receipt of the priority document in the next Office communication.

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<sup>1</sup> The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

<sup>2</sup> The caption of the rejection on page 5 of the Office Action does not refer to Shimizu, however, based on the rejection on the remainder of the page, it appears that the rejection is based upon Shimizu in combination with Yasui.

## **II. REJECTION OF CLAIMS 17 AND 28 UNDER § 112, 12**

Although Applicants respectfully traverse the rejection of claims 17 and 28 under 35 U.S.C. § 112, second paragraph, as being indefinite, Applicants have amended claims 17 and 28. Accordingly, Applicants request that the Examiner reconsider and withdraw the rejection of claims 17 and 28 under 35 U.S.C. § 112, second paragraph.

## **III. REJECTIONS UNDER §§ 102(e) and 103(a)**

Applicants respectfully traverse the rejection of claims 9-11, 13-16, 20-22, and 24-27 under 35 U.S.C. § 102(e) as being anticipated by Shimizu and the rejection of claims 12, 17, 23, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Shimizu in view of Yasui.

The Examiner should withdraw the rejections for at least the reason that Shimizu does not qualify as prior art against the present application in view of Applicant's perfection of their priority claim. See M.P.E.P. §§ 201.15 and 706.02(b). In order to perfect Applicants' priority claim, Applicants file concurrently herewith a verification of translation and English language translation of Japanese Patent Application No. 11-234517, filed July 16, 1999, from which the present application claims priority. Applicants note that the application that matured into the Shimizu patent was filed on September 2, 1999, and does not claim priority to an earlier U.S. application. Accordingly, the earliest effective date of the Shimizu patent as prior art under 35 U.S.C. § 102(e) is its September 2, 1999, filing date, which is after Applicants' perfected priority filing date. Thus, Shimizu does not qualify as prior art under 35 U.S.C. § 102(e).

Furthermore, Shimizu does not qualify as prior art under 35 U.S.C. §§ 102(a) or 102(b). Shimizu does not qualify as prior art under 35 U.S.C. § 102(b) because its patent date (April 13, 2004) is not more than one year prior to the earliest effective U.S. filing date of the present application (i.e., the July 14, 2000 filing date of the application from which the present application is a division). Likewise, Shimizu does not qualify as prior art under 35 U.S.C. § 102(a) because its patent date (April 13, 2004) is not prior to the earliest effective U.S. filing date of the present application (July 14, 2000).

In view of the above, Shimizu does not qualify as prior art against the present application. Therefore, the rejection of claims 9-11, 13-16, 20-22, and 24-27 under 35 U.S.C. § 102(e) as being anticipated by Shimizu and the rejection of claims 12, 17, 23, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Shimizu in view of Yasui cannot stand.

**CONCLUSION**

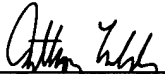
In view of the foregoing, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: January 14, 2008

By:   
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Anthony J. Lombardi  
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**Attachments:** Verification of Translation (1 page); and  
English language translation of JP 11-234517 (28 pages).